IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 453 OF 2005.

Reliance Infocom Ltd.,
A Company incorporated under
the provisions of the Indian Companies
Act, 1956, and having its Registered
Office at Avadesh House, 3rd Floor,
Preetam Nagar, Ellis Bridge,
Ahmedabad-380 006 and Branch Office
at Dempo Trade Centre, 4th Floor,
Patto Complex, Panaji, represented
by its authorized signatory,
Mr. Suraj Lotlikar. .... Petitioner.

Versus

1. Shri Marcus Gracias Flor.
2. Shri Minguel Caitan Fernandes.
   Ascona Benaulim, Salcete, Goa
   (On behalf of themselves and as
   representatives of residents of
   Village of Benaulim, more
   particularly residents of Ward Mazilvado
   and Ascona, Benaulim, Salcete, Goa).
3. Shri Caetano M. Furtado
   resident of Benaulim.
4. Shri Honorato Velho.
5. Smt. Honorato Velho.
   Both residents of Benaulim,
   Salcete, Goa.
6. Smt. Therezinha Velho Pereira.
7. Shri Valeriano Pereira,
   both residents of Goa Velha. .... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Mr. M. D'Souza, Advocate for the Petitioner.

Mr. M.P. Almeida, Advocate for the Respondents No.1 to 3.

CORAM: SMT. RANJANA DESAI, J.

DATE: 30th JUNE, 2006.

ORAL ORDER:

This Writ Petition is filed by the original plaintiff in Special Civil Suit No. 62/05/A. The suit was, inter alia, for restraining defendants 1 and 2 from entering in the suit property. Defendants 1 and 2 were sued in their individual capacity as well as representatives of the village.

2. In short it is the case of the plaintiff that there is an open plot of land belonging to one Honorato Velho. The petitioner wants to erect a BTS Tower, Prefab Shelter and DG room. It is the case of the plaintiff that the plaintiff made an application for development under Section 44 of the Goa, Daman and Diu Town and Country Planning Act 1974. Permission came to be granted subject to confirmation from Margao Planning & Development Authority. On 27.9.04 the plaintiff made an application to the Village Panchayat for permission. It appears that the Panchayat resolved to issue licence to the plaintiff. However, subsequently Panchayat issued a notice and revoked the licence by saying that the residents in the area were objecting to the plaintiff's erecting the said Tower in the suit land. It is in these circumstances that the plaintiff filed a suit, inter alia, praying for a temporary injunction restraining the defendants from entering the suit

property and interfering with the construction carried out by the plaintiff. Defendants 1 and 2 filed their written statement. Defendant 3 filed his written statement and counter claim on 16.5.05. The plaintiff filed an application stating that the counter claim should be excluded as the same is filed to delay the suit and the counter claim travels beyond the scope of the plaint. It was further the case of the plaintiff that parties who were not added as defendants in the suit are sought to be added as parties to the counter claim. The counter claim is malafide and vexatious and therefore it should be rejected.

3. The trial Court rejected all the applications.

4. Being aggrieved by the impugned order so far as it rejects the plaintiff's application for exclusion of counter claim, the plaintiff has approached this Court.

5. I have heard at some length Mr. Lotlikar, the learned Senior Counsel for the petitioner. He contended that the trial Court ought to have excluded the counter claim inasmuch as the counter claim contains a prayer that the third defendant be declared to be a deemed purchaser of the suit land. The learned counsel contended that the Civil Court cannot issue such a declaration and whether or not a person is a deemed purchaser

could only be decided by the Mamlatdar as per the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as the said Act). The learned counsel also pointed out that the 3rd defendant is trying to draw in the litigation parties who are not impleaded as defendants in the suit. The plaintiff thus wants to unnecessarily expand the scope of the controversy and delay the litigation. The learned counsel contended that it would be open for defendant 3 to adopt appropriate other remedy provided in law and hence this Court should set aside the impugned order.

6. The learned counsel for the respondents, on the other hand, submitted that the trial Court has rightly refused to exclude the counter claim. He submitted that in order to avoid multiplicity of proceedings, it is necessary to entertain the instant counter claim. He submitted that the plaintiff with malafide intention did not implead the owner of the suit land. Defendant 3 claims to be a tenant of the suit land. In the circumstances, excluding of the counter claim would lead to further litigation and therefore the Court has rightly rejected the application of the plaintiff.

7. So far as the argument of Mr. Lotlikar that the parties who were not impleaded in the suit have been impleaded as parties in the counter claim and hence 3rd defendant has committed an illegality is concerned, in my

opinion it deserves to be rejected. Under Order 8, Rule 15 of the Code of Civil Procedure, the defendant is entitled to add persons who are not parties to the original suit as party defendants in a counter claim. This submission of the learned counsel must therefore be rejected.

8. So far as the second submission of Mr. Lotlikar that the Civil Court cannot give a declaration that the defendant is a deemed purchaser is concerned, it does appear from the provisions of the said Act that it is the Mamlatdar who can decide whether a person is a deemed purchaser or not. In such a situation the proper course for the defendant would be to adopt the necessary remedies available to him under the said Act. It is true that in a suit simpliciter for permanent injunction if a plea of tenancy is raised, the Civil Court has to refer that issue to the Tenancy Court if the said plea is found to be not vague or frivolous. This is well settled by the decision of this Court in ***Bhagwanrao s/o Jijaba Auti v. Ganpatrao s/o Mugaji Raut and another (1987 (3) Bom. C.R. 258)*** and as the written statement stands today, the Court may if it thinks fit do so. But asking the Civil Court in a counter claim to give a declaration that the 3rd respondent is a deemed purchaser would not be a proper course and therefore in the facts of this case, the appropriate remedy for the 3rd defendant would be to adopt the necessary remedy, if he so desires under the said

Act. In the circumstances, without expressing opinion on the merits of the parties, I set aside the impugned order dated 19.09.2005. The counter claim stands excluded. However, it is made clear that defendant 3 will be entitled to adopt such remedy as he deems fit to establish his claim as a deemed purchaser.

Writ Petition is disposed of in the aforestated terms.

SMT. RANJANA DESAI, J.

sl.